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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/915,103	07/25/2001	Michael J. McMahon	769-236 Div. 6	5900

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PITNEY, HARDIN, KIPP & SZUCH LLP
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EXAMINER

SIPOS, JOHN

ART UNIT PAPER NUMBER

3721

DATE MAILED: 05/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/915,103

Applicant(s)

MCMAHON ET AL.

Examiner

John Sipos

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 28-62 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 28 and 30-62 is/are rejected.
- 7) ☒ Claim(s) 29 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

The finality of the rejection of the last Office action is withdrawn and a rejection of the claims follows.

DOUBLE PATENTING

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 61 and 62 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,178,722.

Although the conflicting claims are not identical, they are not patentably distinct from each other because a person having ordinary skill in the art would have found the claims of the instant application to be obvious variations of the claims of the patents.

The claim of the patent and the claims of the present application are both directed to the same subject matter of providing a plurality of connected fastener segments, mounting sliders to each of the fastener segments, providing a continuous film web, after attaching the sliders to the fastener segments attaching the slider-carrying fastener segments to the film web, forming the film web into bags by folding the web, filling the

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bags and cross-sealing the web to complete the bags. The claim of the patent is directed to a specific bag forming process/machine, i.e. the use of form-fill-seal machine wherein the film web is folded around a filling tube as shown in Figure 5, while the instant claims are directed to a more generic operation that requires no specific bag forming operation. It would have been obvious to one skilled in the art to eliminate the references to the specific bag forming operation from the process claimed in Claim 1 of the patent. While the claim of the present application and the claims of the patent may have variations and differences in their scope and terminology, these variations and differences would have been obvious to one having ordinary skill in the art.

REJECTIONS OF CLAIMS BASED ON PRIOR ART

Claims 61 and 62 are rejected under 35 U.S.C. ' 103(a) as being unpatentable over the patent to Thieman (5,956,924) in view of Gilbert (UK Patent Application 2,085,519) or alternatively over Gilbert in view of Thieman.

The patent to Thieman shows a method of manufacturing reclosable bags comprising providing a plurality of connected fastener segments 32,34, providing a continuous film web 102, folding the film web by folder 202, sealing the fastener segments to the film web by sealer 108, mounting sliders to each of the fastener segments by attaching mechanism 114, forming the film web into bags by cross-sealing the film by sealers 206,208, filling the bags by filling mechanisms 214 and sealing the bags by sealer 218. The process set forth by Thieman differs from the claimed process

in that Thieman applies the sliders to the fastener segments after the attachment of the fastener segments to the film web.

The Gilbert reference teaches a process for applying sliders to fastener segments comprising of feeding fastener segments 1, feeding spaced sliders 3 by feeding turret 9 having a plurality of slider holding recesses 10, applying the sliders at spaced locations on to the fastener segments. The slider-carrying fastener segments are then attached to a film web. This operation results in a faster and more efficient operation as discussed on page 1, lines 16-38 of Gilbert. The process set forth by Gilbert differs from the claimed process in that it does not discuss the bag forming process.

It would have been obvious to one skilled in the art to mount the sliders of Thieman to the fastener segments before the attachment of the fastener segments to the film web as taught by Gilbeert to provide for a faster and a more efficient operation.

Alternatively, it would have been obvious to one skilled in the art to complete the bag forming process of Gilbert by the process set forth in the Thieman patent, namely forming the web that is carrying the fastener segments and sliders into bags and filling the bags with a product.

Claims 28,32 and 33 are rejected under **35 U.S.C. ' 102(e)** as being clearly anticipated by or alternatively are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Belmont (6,427,421) for the reasons set forth in the

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previous action. The patent to Belmont discloses the method of forming packages with recloseable fasteners that comprises of feeding a folded web 20, feeding a fastener 14 with sliders 12 to the web, sealing a half of the fastener to a first wall of the web at 56, cross sealing the web to form bags at 60, filling the bags at 66 and finally sealing the other half of the fastener to the other wall of the web at 68. Although the Belmont patent does not specifically discuss the insertion process of the slider on the fastener, the steps of providing a supply of sliders and inserting a slider on the fastener are inherent in the Belmont process since the sliders 12 are preapplied to the fasteners 14. Alternatively, these steps are well known in the zipper making art and it would have been obvious to one of ordinary skilled in the art to remove a slider from its supply and apply it to the fastener of Belmont. Regarding claims 32 and 33, note column 4, line 51 et seq. column 5, lines 11-25 and column 7, line 29 et seq. of Belmont.

Claims 30 and 31 are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Belmont (6,427,421). The insulation of materials from each other that are not being sealed during a sealing operation is a well known step in any sealing operation and it would have been obvious to one of ordinary skilled in the art to insulate the portions of the fastener and the bag walls that are not being sealed.

ADDITIONAL REFERENCES CITED

The following prior art is made of record but has not been relied upon in the rejection of claims. However, the prior art is considered pertinent to applicant's disclosure.

The patents to Ferrel and Sullivan show methods for forming bags wherein sliders are applied to fastener segments and after such application the slider-carrying fastener segments are attached to bags.

ALLOWABLE SUBJECT MATTER

Claim 29 is objected to as being dependent upon a rejected base claim, but **would be allowable if rewritten in independent form** to include all of the limitations of the base claim and any intervening claims.

Claims 34,35,37-44,46-52 and 54-59 are allowed.

INTERFERENCE

Claims 34-62 of this application have been copied by the applicant from U. S. Patent No. 6,347,437 and 6,427,421. These claims are not patentable to the applicant because some of the claims are rejected on the bases stated above.

An interference cannot be initiated since a prerequisite for interference under 37 CFR 1.606 is that the claims be patentable to the applicant subject to a judgment in the interference.


Any inquiry concerning this communication should be directed to **Examiner John Sipos** at telephone number **(703) 308-1882**. The examiner can normally be reached from 6:30 AM to 4:00 PM Monday through Thursday.

The **FAX** number for Group 3700 of the Patent and Trademark Office is **(703) 872-9306**.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Mr. Rinaldi Rada**, can be reached at **(703) 308-2187**.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group Receptionist whose telephone number is (703) 308-1148.



John Sipos
Primary Examiner
Art Unit 3721

js



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